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9 **BEFORE THE**
10 **BOARD OF REGISTERED NURSING**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No. 2008-253

13 PAUL FULGENICO ZUNIGA AVENDANO

4858 Estepona Way

14 Buena Park, CA 90621

A C C U S A T I O N

15 Registered Nursing License No. 701293

16 Respondent.

17
18 Complainant alleges:

19 PARTIES

20 1. Ruth Ann Terry, M.P.H, R.N. (Complainant) brings this Accusation solely
21 in her official capacity as the Executive Officer of the Board of Registered Nursing (Board).

22 2. On or about April 2, 2007, the Board issued Registered Nursing License
23 Number 701293 to Paul Fulgenico Zuniga Avendano (Respondent). The license expires on
24 February 28, 2009, unless renewed.

25 JURISDICTION

26 3. This Accusation is brought before the Board under the authority of the
27 following laws. All section references are to the Business and Professions Code unless otherwise
28 indicated.

1 4. Section 2750 of the Business and Professions Code ("Code") provides, in
2 pertinent part, that the Board may discipline any licensee, including a licensee holding a
3 temporary or an inactive license, for any reason provided in Article 3 (commencing with section
4 2750) of the Nursing Practice Act.

5 5. Section 2761 of the Code states in pertinent part:

6 The board may take disciplinary action against a certified or
7 licensed nurse or deny an application for a certificate or license for any of the
8 following:

9 (a) Unprofessional conduct, which includes, but is not limited to,
10 the following:

11 ...

12 (d) Violating or attempting to violate, directly or indirectly, or
13 assisting in or abetting the violating of, or conspiring to violate any
14 provision or term of this chapter [the Nursing Practice Act] or regulations
15 adopted pursuant to it.

16 ...

17 (f) Conviction of a felony or of any offense substantially related
18 to the qualifications, functions, and duties of a registered nurse, in which
19 event the record of the conviction shall be conclusive evidence thereof.

20

21 6. California Code of Regulations, title 16, section 1444, states in pertinent
22 part:

23 A conviction or act shall be considered to be substantially
24 related to the qualifications, functions or duties of a registered nurse if to a
25 substantial degree it evidences the present or potential unfitness of a registered
26 nurse to practice in a manner consistent with the public health, safety,
27 or welfare. Such convictions or acts shall include but not be limited to the
28 following:

29 ...

30 (d) Any conviction or act subject to an order of registration
31 pursuant to Section 290 of the Penal Code.

32 ///

33 ///

34 ///

1 7. Section 490 of the Code states:

2 A board may suspend or revoke a license on the ground that
3 the licensee has been convicted of a crime, if the crime is substantially
4 related to the qualifications, functions, or duties of the business or
5 profession for which the license was issued. A conviction within the
6 meaning of this section means a plea or verdict of guilty or a conviction
7 following a plea of nolo contendere. Any action which a board is permitted
8 to take following the establishment of a conviction may be taken when the
9 time for appeal has elapsed, or the judgment of conviction has been affirmed
10 on appeal, or when an order granting probation is made suspending the
11 imposition of sentence, irrespective of a subsequent order under the
12 provisions of Section 1203.4 of the Penal Code.

13 8. Section 125.3 provides, in pertinent part, that the Board may request the
14 administrative law judge to direct a licensee found to have committed a violation or violations
15 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
16 enforcement of the case.

17 9. California Code of Regulations, title 16, section 1445, states:

18 (a) When considering the denial of a license under Section 480 of the code,
19 the board, in evaluating the rehabilitation of the applicant and his/her
20 present eligibility for a license will consider the following criteria:

21 (1) The nature and severity of the act(s) or crime(s) under consideration
22 as grounds for denial.

23 (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s)
24 under consideration as grounds for denial which also could be considered as
25 grounds for denial under Section 480 of the code.

26 (3) The time that has elapsed since commission of the act(s) or crime(s)
27 referred to in subdivision (1) or (2).

28 (4) The extent to which the applicant has complied with any terms of
 parole, probation, restitution, or any other sanctions lawfully imposed
 against the applicant.

 (5) Evidence, if any, of rehabilitation submitted by the applicant.

 (b) When considering the suspension or revocation of a license on the
 grounds that a registered nurse has been convicted of a crime, the board, in
 evaluating the rehabilitation of such person and his/her eligibility for a
 license will consider the following criteria:

 (1) Nature and severity of the act(s) or offense(s).

 (2) Total criminal record.

 (3) The time that has elapsed since commission of the act(s) or offense(s).

1 (4) Whether the licensee has complied with any terms of parole, probation,
2 restitution or any other sanctions lawfully imposed against the licensee.

3 (5) If applicable, evidence of expungement proceedings pursuant to Section
4 1203.4 of the Penal Code.

5 (6) Evidence, if any, of rehabilitation submitted by the licensee.

6 FIRST CAUSE FOR DISCIPLINE

7 (Conviction of Crime - November 9, 2007)

8 10. Respondent is subject to disciplinary action under sections 2761(f) and
9 490, pursuant to California Code of Regulations, title 16, section 1444(d), in that Respondent
10 was convicted of a crime that is substantially related the qualifications, functions or duties of a
11 registered nurse. The circumstances are as follows:

12 11. On or about July 31, 2006, John Doe, a 16 year old male, was walking to
13 school at approximately 9:25 a.m. Respondent, who was driving his vehicle, stopped his car and
14 asked John Doe where he was going and if he wanted a ride. John Doe got inside the car. Once
15 in the car, respondent asked John Doe how old he was and whether he had sex before.
16 Respondent asked John Doe if he masturbated, how "big" he was, and wanted to know the size
17 of his penis. Respondent told John Doe he would give him \$20 if he allowed respondent to give
18 him a "blow job." Respondent drove past two school driveways. After John Doe told him he
19 had passed the driveways, Respondent made a U-turn and drove into the parking lot of the
20 school, and John Doe exited the vehicle. John Doe memorized the license plate number of the
21 vehicle while the respondent drove away.

22 12. A criminal complaint was filed on September 18, 2006, in *People of the*
23 *State of California v. Paul Zuniga Avendano*, Orange County Superior Court Case No.
24 06NM11151, alleging one count of violation of Penal Code section 647.6(a), child annoyance, a
25 misdemeanor. The complaint was amended to add an additional count of violation of Penal
26 Code section 647(b), agreeing to engage in prostitution, a misdemeanor.

27 13. A jury found Respondent guilty of the charges on August 24, 2007, and
28 Respondent was sentenced on November 9, 2007. He was placed on three (3) years formal
probation. Conditions of probation included completing thirty (30) days of volunteer work for

1 Cal Trans, Fourth Amendment search and seizure waivers; lifetime registration as a sex offender
2 pursuant to Penal Code section 290; no association with minors, with the exception of relatives;
3 no frequenting places where minors congregate; and have employment approved by the probation
4 department.

5 SECOND CAUSE FOR DISCIPLINE

6 (Violation of Board Statutes or Regulations)

7 14. Respondent is subject to disciplinary action under section 2761(d) in that
8 he violated Board of Registered Nursing statutes or regulations, as more particularly described in
9 paragraphs 11 through 13, above.

10 PRAYER


11 WHEREFORE, Complainant requests that a hearing be held on the matters herein
12 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

13 1. Revoking or suspending Registered Nursing License Number 701293,
14 issued to Paul Fulgenico Zuniga Avendano;

15 2. Ordering Paul Fulgenico Zuniga Avendano to pay the Board of Registered
16 Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to
17 Business and Professions Code section 125.3; and

18 3. Taking such other and further action as deemed necessary and proper.

19 DATED: March 27, 2008

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21
22 
23 RUTH ANN TERRY, M.P.H., R.N.
24 Executive Officer
25 Board of Registered Nursing
26 State of California
27 Complainant
28

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Interim Suspension Order Sought
by:

RUTH ANN TERRY, Executive Director,
California Board of Registered Nursing,

Petitioner,

Against:

PAUL FULGENICO SUNIGA AVENDANO, R.N.
7241 Kensington Drive
Buena Park, CA 90621

Registered Nurse License No. 701293

Respondent.

Case No. 2008-253
OAH No. 20080301015

**ORDER SUSPENDING
REGISTERED NURSING
LICENSE PURSUANT TO
BUSINESS AND PROFESSIONS
CODE SECTION 494**

TO: PAUL FULGENICO SUNIGA AVENDANO, R.N.

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, carefully read and considered all moving pleadings and documentary evidence filed by petitioner in this matter and heard and considered oral arguments in support of and in opposition to the issuance of an Interim Suspension Order pursuant to Business and Professions Code section 494 on March 7, 2006.

Kathleen B.Y. Lam, Deputy Attorney General, Office of the Attorney General, State of California, represented petitioner Ruth Ann Terry, Executive Director, Board of Registered Nursing, Department of Consumer Affairs, State of California.

Frederick M. Ray, Attorney at Law, appeared of respondent Paul Fulgencio Suniga Avendano, R.N., who was present throughout the hearing.

IT IS HEREBY DETERMINED under Business and Professions Code section 494, subdivision (b) that cause exists to issue the interim suspension order set forth hereafter without giving respondent at least 15 days' prior notice of the hearing on the petition because it appears from the petition and the supporting documents that serious injury would result to the public if the matter were heard following the giving of such notice.

IT IS HEREBY DETERMINED under Business and Professions Code section 494, subdivision (c) that cause exists to provide respondent with a hearing on the petition within 20 days of the issuance of this order.

To provide respondent with the opportunity to be heard, it was agreed that a further hearing on the petition for an interim suspension order shall be conducted on April 14, 2008, at the State Office Building located at 1350 Front Street, Sixth Floor, Courtroom 2, San Diego, CA 92101, to commence at 1:30 p.m. or as soon thereafter as the matter may be heard. At the hearing on the petition, respondent may be represented by counsel, have a record made of the proceeding (copies of which shall be available to the licensee upon payment of costs computed in accordance with the provisions for transcript costs for judicial review contained in Section 11523 of the Government Code), may present affidavits and other documentary evidence, and may present oral argument.

IT IS HEREBY DETERMINED that a preponderance of the evidence established cause to issue an interim order suspending Registered Nurse License No. 701293 issued to Paul Zuniga Avendano under Business and Professions Code section 494, subdivision (a). This determination is based on the following. On August 24, 2007, following a three day jury trial, respondent was convicted in the Superior Court of California, County of Orange, North Justice Center, in Case No. 06NM11151 MA, of one count of violating Penal Code section 647.6, subdivision (a) (child annoyance) and one count of violating Penal Code section 647, subdivision (b). The child annoyance conviction involved respondent picking up a 16-year-old male student who was on his way to school and asking that student to engage in unlawful sexual activities. Respondent offered the student \$20 to engage in a sexual act. Respondent was dressed in scrubs at the time. No forceful touching or indecent exposure occurred. Nevertheless, the offense is substantially related to the qualifications, functions and duties of a registered nurse who often has unsupervised access to children while working, particularly when providing home health care.¹ As a consequence of respondent's conviction, respondent was and is required to register as a sex offender under Penal Code section 290. Since he was terminated from his employment with Walnut Manor Care Center, respondent requested permission from his criminal probation officer to work in a home health care setting. Respondent's probation officer denied that request, believing that

¹ Notice is taken that California Code of Regulations, title 16, section 1444 provides:

"A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

(b) Failure to comply with any mandatory reporting requirements.

(c) Theft, dishonesty, fraud, or deceit.

(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code."

respondent would be a danger to the public in an unsupervised setting. No psychiatric report or other documentation was presented to show the nature and extent of respondent's underlying psychopathology, if any, but respondent is in therapy. Under the circumstances, it is concluded that permitting respondent to continue to engage in the licensed activity would endanger the public health, safety, or welfare at this time, although that determination is subject to review upon the submission of additional evidence concerning respondent's misconduct, character, and rehabilitation.

IT IS HEREBY DETERMINED under Business and Professions Code section 494, subdivision (f) that the Registered Nursing Board was required to file an accusation within 15 days of the issuance of the interim order. The Registered Nursing Board met this obligation by filing an accusation on March 27, 2008. If respondent files a Notice of Defense, then a hearing on the accusation must be held within 30 days of the Registered Nursing Board's receipt of the Notice of Defense. A decision must be rendered on the accusation no later than 30 days after submission. The failure to comply with any of the requirements in this subdivision shall dissolve the interim suspension order issued herein or subsequently in this matter by operation of law.

BASED ON THE FOREGOING, AND GOOD CAUSE APPEARING,

IT IS HEREBY ORDERED that pending further order from the Office of Administrative Hearings, Registered Nurse License No. 701293 issued to Paul Zuniga Avendano, also known as Paul Fulgencio Zuniga Avendano, shall be and hereby is suspended.

IT IS FURTHER ORDERED that a further hearing on the petition for an interim suspension order shall be conducted on April 15, 2008, at the State Office Building located at 1350 Front Street, Sixth Floor, Courtroom 2, San Diego, CA 92101, to commence at 9:00 a.m. or as soon thereafter as the matter may be heard.

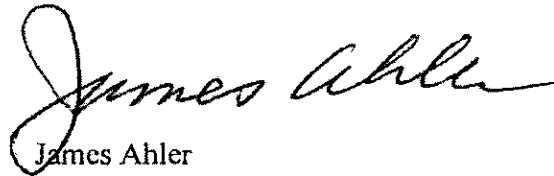
IT IS FURTHER ORDERED that this matter shall proceed to a noticed hearing on the petition on April 14, 2008, at the State Office Building located at 1350 Front Street, Sixth Floor, Courtroom 2, San Diego, CA 92101, to commence at 1:30 p.m. or as soon thereafter as the matter may be heard.

IT IS FURTHER ORDERED that this Interim Order of Suspension shall remain in effect pending the noticed hearing on the petition and pending a final decision on the underlying Accusation if the existing interim order is not modified or vacated.

IT IS FURTHER ORDERED that if respondent files a Notice of Defense, a hearing on the accusation shall be held within 30 days of the Registered Nursing Board's receipt of the Notice of Defense. A decision must be rendered on the accusation no later than 30 days after submission. The failure to comply with any of the requirements in this subdivision shall dissolve the interim order by operation of law.

IT IS FURTHER ORDERED that a copy of this Interim Order of Suspension, the petition for the order, and all supporting documents shall be served on counsel for complainant, respondent, and upon respondent's counsel.

Dated: March 28, 2008

A handwritten signature in black ink, reading "James Ahler". The signature is fluid and cursive, with a large initial "J" and "A".

James Ahler
Administrative Law Judge
Office of Administrative Hearings